

U.S. Senate Committee on the Judiciary
U.S. Senator John Cornyn (R-TX)

“Bankruptcy Reform”

S. 256, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Grassley)
S. 314, Fairness in Bankruptcy Litigation Act of 2005 (Cornyn)

Thursday, February 10, 2005, 10:15 a.m.
Dirksen Senate Office Building Room 226

Thank you, Mr. Chairman, for convening today’s hearing. I also want to thank Senators Grassley and Biden for their hard work and leadership over the last several years to reform our federal bankruptcy laws.

I support bankruptcy reform, because I believe that we need to restore a greater sense of personal responsibility to our financial system and to prevent the abuses of the bankruptcy law that we have witnessed in recent years. Bankruptcy relief should be available to those who are *unable* to pay – not to those who are simply *unwilling* to pay.

I also believe that we must do more to combat forum shopping in our courts. Forum shopping is wrong. It distorts and corrupts our justice system. Because picking the judge isn’t far off from picking the verdict.

So I’m glad that we’re working now on the floor of the United States Senate to combat forum shopping in the area of class actions. And I believe that we need to undertake similar steps to prevent forum shopping in the area of bankruptcy law.

Earlier this week, I introduced new legislation entitled the **Fairness in Bankruptcy Litigation Act of 2005**. The bill would provide much-needed protection – for consumers, creditors, workers, pensioners, shareholders, and small businesses – by reforming the rules governing venue in bankruptcy cases to combat forum shopping. It would prevent corporate debtors from moving their bankruptcy cases thousands of miles away from the communities and their workers who have the most at stake. And it will prevent bankrupt corporations from effectively selecting the judge in their own cases.

That’s exactly what happened in the Enron bankruptcy litigation. I tried to steer that case towards federal court in Houston, when I served as Texas Attorney General. But because of current law, that litigation was instead adjudicated in New York – where Enron reportedly employed fewer than 60 employees.

Forum shopping and abuse of our bankruptcy venue law is a real problem. That problem has been well documented by our nation’s leading bankruptcy experts – including most recently in a comprehensive book published just last week by UCLA Law **Professor Lynn M. LoPucki**, entitled *Courting Failure: How Competition for Big Cases is Corrupting the Bankruptcy Courts*, as well as by **Professor Jay L. Westbrook** of the University of Texas Law School – a school that of course holds a special place in my heart.

I am pleased to say that, although the bill was introduced just two days ago, it has already garnered strong, widespread support. For example, the bill is supported by **Texas Attorney General Greg Abbott, a Republican, and former Massachusetts Attorney General Scott Harshbarger, a Democrat.** The bill is also supported by major national bankruptcy organizations like the **National Association of Credit Management** and the **Commercial Law League of America.** Because my bill will help small businesses, the **National Federation of Independent Business** supports it. The bill has earned the support of numerous prominent bankruptcy law professors and practitioners nationwide, including many from my home state of Texas. And it is especially important to me, in light of the many Texans who were hurt by the Enron corporate scandal, that this legislation is endorsed by **representatives of the Enron Employees Committee.** I ask unanimous consent that all of these endorsement letters be entered into the record.

Notably, **the October 1997 report of the National Bankruptcy Review Commission** overwhelmingly endorsed bankruptcy venue reform. That's why my bill is supported by **Brady Williamson,** who served as chairman of the commission. Bankruptcy venue reform was also endorsed by commission member and bankruptcy expert **U.S. Circuit Judge Edith Jones of Houston, Texas,** as well as by **Harvard Law Professor Elizabeth Warren,** who I'm pleased to see here today, and who served as the reporter for the commission. Anyone who knows anything about bankruptcy knows that getting consensus from Mr. Williamson, Judge Jones, and Professor Warren is really quite an achievement.

Mr. Chairman, I ask unanimous consent that my statement today, and my floor statement earlier this week introducing the legislation, be entered into the committee hearing record. And I look forward to working with my colleagues on this legislation to provide much-needed protection – for consumers, creditors, workers, pensioners, shareholders, and small businesses – by reforming the rules governing venue in bankruptcy cases to combat forum shopping.